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for the Substantively Consolidated SIPA Liquidation
of Bernard L. Madoff Investment Securities LLC and
the estate of Bernard L. Madoff*

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

SECURITIES INVESTOR PROTECTION
CORPORATION,

Plaintiff-Applicant,

v.

BERNARD L. MADOFF INVESTMENT
SECURITIES LLC,

Defendant.

In re:

BERNARD L. MADOFF,

Debtor.

IRVING H. PICARD, Trustee for the
Substantively Consolidated SIPA Liquidation of
Bernard L. Madoff Investment Securities LLC
and the Estate of Bernard L. Madoff,

Plaintiff,

v.

FEDERICO CERETTI, *et al.*

Defendants.

No. 08-01789 (SMB)

SIPA LIQUIDATION

(Substantively Consolidated)

Adv. Pro. No. 09-01161 (SMB)

APPLICATION FOR THE ISSUANCE OF LETTER OF REQUEST

1. Plaintiff, Mr. Irving H. Picard, as trustee (“Trustee”) for the liquidation of the business of Bernard L. Madoff Investment Securities LLC (“BLMIS”) under the Securities Investor Protection Act (“SIPA”), substantively consolidated with the estate of Bernard L. Madoff, through his attorneys, Baker & Hostetler LLP, submits this application for the issuance of a Letter of Request to the Royal Courts of Justice for the examination of United Kingdom resident, Mr. Carlo Grosso.

2. This application is made pursuant to 28 U.S.C. § 1781, this Court’s inherent authority, and in light of the comity between the United States and the United Kingdom. Service will be effected pursuant to the Hague Service Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents (the “Hague Service Convention”), to which the United States and the United Kingdom are signatories.

3. Mr. Grosso is a foreign citizen and non-party located in London, England. Thus, the Letter of Request provides the only means of compelling discovery from him.

FACTUAL BACKGROUND

Madoff’s Ponzi Scheme

4. Bernard L. Madoff (“Madoff”), through the investment advisory business of BLMIS, conducted a decades-long Ponzi scheme of breathtaking scale. His fraud was sustained by infusions of money from around the globe. In particular, domestic and foreign investment vehicles, colloquially known as “feeder funds,” injected several billions of dollars into his scheme. (Fourth Amended Complaint ¶ 1).

5. Included among these feeder funds were Kingate Global Fund, Ltd., In Liquidation (“Kingate Global”) and Kingate Euro Fund, Ltd., In Liquidation (“Kingate Euro” and together with Kingate Global, the “Kingate Funds”). (*Id.*).

6. Since their inception, the Kingate Funds deposited a combined total of approximately \$1.7 billion with BLMIS and over time withdrew nearly a billion dollars from BLMIS. (*Id.* ¶ 3).

7. The Trustee alleges that these withdrawn funds comprise customer property and constitute avoidable transfers under the United States Bankruptcy Code that the Trustee seeks to recover for equitable distribution. (*Id.* ¶ 248).

8. The Trustee filed the Fourth Amended Complaint on March 17, 2014 in this adversary proceeding, seeking, *inter alia*, to avoid and recover \$926,351,905 in fraudulent transfers made to the Kingate Funds under the Bankruptcy Code, the New York Debtor Creditor Law, and SIPA § 78fff-2(c)(3). (*Id.* ¶ 8).

Mr. Grosso's Connection to the Kingate Funds

9. This application concerns the request for documents from, and examination under oath of, Mr. Grosso.

10. A majority of the issues and allegations contained in the Fourth Amended Complaint are relevant to Mr. Grosso and his involvement with the below facts, which give rise to the need for this Request. Mr. Grosso's knowledge regarding the Kingate Funds and their service providers has been determined based on the Trustee's investigation to date, including the Kingate Funds' interviews of Mr. Grosso, testimony provided by Mr. Grosso to third parties, and the review of documents produced to the Trustee.

11. Following an introduction to Madoff by the head of a large feeder fund, Tremont (Bermuda) Limited ("Tremont") (*Id.* ¶ 94), Mr. Grosso together with his colleague, Mr. Ceretti, formed Kingate Global in 1994 in the British Virgin Islands ("BVI"). Kingate Global opened an account with BLMIS that same year. By that time, BLMIS would accept only institutional investors.

12. Mr. Ceretti and Mr. Grosso were sophisticated investment professionals with decades of combined experience in the investment industry.

13. In 1996, Mr. Ceretti and Mr. Grosso created a sub-fund of Kingate Global to attract investments in Deutsche Marks that would then be converted to U.S. currency and deposited with BLMIS. That same year, the sub-fund opened a customer account with BLMIS. In 2000, that sub-fund became a separate BLMIS feeder fund, Kingate Euro, also formed in the BVI, to solicit investments abroad in Euros that would then be converted to U.S. currency and deposited with BLMIS. Kingate Euro assumed the rights to the sub-fund's account with BLMIS. Mr. Ceretti and Mr. Grosso structured the Kingate Funds separately, but they operated relative to BLMIS substantially the same.

14. At the time they formed the Kingate Funds, Mr. Ceretti and Mr. Grosso headed an asset management and investment advisory firm in London called FIM Limited. It was founded by Mr. Grosso in 1981 (*Id.* ¶ 35, 49), but Mr. Ceretti became an equal owner in or about 1986. Mr. Ceretti and Mr. Grosso later co-founded FIM Advisers LLP in London, which succeeded FIM Limited in 2005. (*Id.* ¶¶ 36, 52).

15. Despite having an existing company that could have managed the Kingate Funds, Mr. Ceretti and Mr. Grosso formed a separate management company by the name of Kingate Management Limited ("KML") to act as manager for the Kingate Funds. (*Id.* ¶ 4). KML employees frequently communicated with, and sought advice from, Mr. Grosso on the management and operation of KML and the Kingate Funds.

16. Mr. Grosso also frequently communicated directly, or indirectly, with the Kingate Funds' investors, often addressing concerns those investors raised about the Kingate Funds or BLMIS and Madoff. In fact, one investor referred to Mr. Grosso as "Mr. Kingate." Tremont was appointed as co-manager with KML for Kingate Global, a relationship that lasted about ten years.

(*Id.* ¶ 106).

17. Mr. Ceretti and Mr. Grosso caused KML to enter into a consulting and distribution agreement with the FIM entities. The FIM entities provided marketing, analysis, management, and consulting services to KML and the Kingate Funds. As a result, much of KML's management responsibilities were delegated to the FIM entities. (*Id.* ¶¶ 5, 46, 51, 112).

18. FIM had a robust due diligence process and marketed itself to the public accordingly. (*Id.* ¶¶ 122-27). In addition to acting as consultant, at least fourteen of FIM's investment funds were invested in the Kingate Funds. The FIM funds' investments in the Kingate Funds required the performance of due diligence on the Kingate Funds and BLMIS. The diligence conducted by FIM is part of the cumulative knowledge that can be imputed to the Kingate Funds via Mr. Ceretti and Mr. Grosso.

19. On Mr. Ceretti and Mr. Grosso's direction, the Kingate Funds' engaged other service providers for the Kingate Funds, including Citi Hedge Fund Services Limited ("Citi Hedge"), based in Bermuda, as administrator, HSBC Bank Bermuda ("HSBC"), as custodian, and PricewaterhouseCooper ("PWC"), as auditor. (*Id.* ¶ 72, 80).

20. Mr. Grosso has first-hand knowledge of the flow of the Kingate Funds' assets to and from HSBC, and gave direction as to the movement of those funds to and from BLMIS, or to the Kingate Funds' service providers. Mr. Grosso also has first-hand knowledge of the roles performed by Citi Hedge and PWC on behalf of the Kingate Funds, and the concerns raised by these service providers about BLMIS in the course of their performing these roles.

21. To complete their business enterprise relative to investing with BLMIS, Mr. Ceretti and Mr. Grosso formed estate trusts in Jersey, and shell companies, through which they beneficially owned KML. Through Ashby Trust, and its holding companies, Mr. Grosso personally received millions of dollars in management fees paid to KML as a result of its work on

behalf of the Kingate Funds. (*Id.* ¶ 63, 257).

22. Throughout the Kingate Funds' fourteen years of operation, Mr. Grosso often spoke directly with Madoff and others at BLMIS and met with Madoff on multiple occasions, both at BLMIS and abroad. (*Id.* ¶ 99, 100, 101, 102)

23. After Madoff confessed to running a Ponzi scheme in 2008, the Kingate Funds went into winding up proceedings in the BVI and Bermuda. KML also went into a winding up proceeding in Bermuda.

24. Mr. Grosso was an essential, and dominant, party to the enterprise he and Mr. Ceretti engineered to benefit from Madoff's fraud and he has personal knowledge concerning the Kingate Funds, KML, the FIM entities, their trusts and shell companies, all of which is relevant to the allegations in the Trustee's Fourth Amended Complaint and which give rise to this Request.

25. For the above reasons, the Trustee believes that the Proposed Letter of Request is just and appropriate, and respectfully requests that the Court issue such Letter of Request to the indicated Judicial Authority.

Dated: New York, New York
February 16, 2018

Respectfully submitted,

/s/ Gonzalo S. Zeballos

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